

REMARKS

I. STATUS OF THE CLAIMS

Claims 1-62 are pending in this application, with Claims 1, 20 and 41 being written in independent form. Claims 1-62 stand rejected under 35 U.S.C. §103 as being obvious based on a combination of references. Applicants have amended Claims 1, 2, 4, 6, 14, 20, 21, 23, 31, 41, 42 and 47 herein, and have added new Claims 63-69. Applicants respectfully submit that no new matter has been added to the application by way of this amendment. Entry of the amendments, reconsideration and withdrawal of the rejections, and allowance of the claims are respectfully requested.

II. THE PENDING CLAIMS ARE PATENTABLE

Claims 1-12, 17-29, 34-41 and 46-62 stand rejected under 35 U.S.C. §103 as being obvious over U.S. Patent No. 5,914,941 to Janky ("Janky '941 patent"). In addition, dependent Claims 13-16, 30-33 and 42-45 stand rejected under 35 U.S.C. §103 as being obvious over the Janky '941 patent, in view of U.S. Patent No. 6,292,834 to Ravi ("Ravi '834 patent"). As discussed below, Applicants respectfully submit that the claims, as amended, are patentable over the prior art of record. Entry of the amendments, and reconsideration and withdrawal of the rejections are respectfully requested.

A. Amended Independent Claims 1, 20 And 41 Are Not Obvious

1. The Amended Limitation Is Absent In The Prior Art Of Record

Independent Claims 1, 20 and 41 have been amended to recite "wherein blocks of data are received at an initial data transfer rate which is reduced upon receipt of a predetermined amount of data...." Support for this amendment is found in the specification, for example at page 4, lines 5-18. No new matter has been added and entry of this amendment is respectfully

requested.

Applicants respectfully submit that this limitation is neither taught nor suggested by the Janky '941 patent. Indeed, the Office Action concedes that the Janky '941 patent "does not teach monitoring the buffer in order to adjust the transmission rate." (June 17, 2003 Office Action, at 4). Rather, the Janky '941 patent discloses a system for long term storage of a transferred data file. As discussed in greater detail below, the Janky '941 patent teaches storing a transferred file in a long term storage medium so that a user may access the file at any time. Therefore, Applicants respectfully submit that amended independent Claims 1, 20 and 41, as well as all of the claims dependent therefrom, are patentably distinct from the Janky '941 patent. Entry of the amendment and allowance of the pending claims are respectfully requested.

2. There Is No Motivation To Modify The Janky '941 Patent

In addition, independent claims 1, 20 and 41 also recite that: (1) the received blocks of data temporarily stored in the buffer are processed without storing the received blocks of data in a long term memory medium; and (2) the processed successive blocks of data are deleted or overwritten following playback. In the Office Action, the Examiner acknowledges that "Janky does not teach a buffer for temporarily storing the received blocks of data in which the temporarily stored blocks of data are processed without storing the received blocks of data in a long term memory medium and the blocks of data are deleted by the device following playback." (June 17, 2003 Office Action, at 3).

Despite the absence of this limitation in the Janky '941 patent (or any of the prior art of record), the Office Action seeks to take the Official Notice that it was well known in the art to temporarily store received blocks of data in a buffer, process the temporarily stored blocks of data without storing the received blocks of data in a long term memory, and delete the blocks of

data prior following playback. If such Official Notice is maintained, Applicants respectfully request that the Examiner substantiate this position as provided under 37 C.F.R. §1.104(d).

Furthermore, even if such Official Notice were properly taken, there is simply no motivation to modify the Janky '941 patent to obtain the elements of amended independent claims, in light of the clear and explicit teaching of the Janky '941 patent. The Janky '941 patent describes in great detail saving data on a hard drive so that a user can listen to the data, "when and where the user desires." (Col. 7, lns. 12-13). The Janky '941 patent expressly states that:

- "The device herein disclosed is similar to a dedicated personal computer, complete with hard drive...." (Col. 6, lns. 66-67).
- "The device must also be able to store significant quantities of digital data...." (Col. 4, lns. 55-57).
- "Audio programming is stored digitally on a non-volatile medium, such as a hard drive, or in a flash EPROM, or other solid state non-volatile memory." (Col. 5, lns. 32-35).
- Ordering program material from a service and "receiving the program material via automatic download for storage in a hard drive...." (Abstract, lns. 14-18).
- Saving the program material in a hard drive. (Col. 12, lns. 35-39).

Quite simply, the Janky '941 patent does not teach or suggest temporarily storing blocks of processed data, without storing the received blocks of data in a long term memory medium. In light of the overwhelming teachings and explicit recitation of storing multimedia data in a hard drive (long term memory) that is prevalent throughout the Janky '941 patent, it would not be obvious to modify the teachings of the Janky '941 patent with the assertions made regarding Official Notice. Simply taking Official Notice that processing a streamed multimedia file, storing the data in a buffer and deleting it after processing was well known in the art, does

not provide sufficient motivation for modifying the Janky '941 patent to achieve the elements recited in the independent claims.

Thus, for at least the above-mentioned reasons, Applicant respectfully submits that independent Claims 1, 20 and 41, as amended—and Claims 2-19, 21-40 and 42-62 which depend (directly or indirectly) therefrom—are patentable over the prior art of record. Entry of the amendments, and reconsideration and withdrawal of the §103 rejections are respectfully requested.

B. Dependent Claims 13-16, 30-33 And 42-45 Are Not Obvious

In addition to the reasons detailed above with respect to the independent claims, Applicants respectfully submit that dependent claims 13-16, 30-33 and 42-45 are not obvious under 35 U.S.C. §103 over the Janky '941 patent in view of the Ravi '834 patent for these additional reasons. Reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection are respectfully requested.

Applicants respectfully submit that neither the Janky '941 patent nor the Ravi '834 patent teach or suggest, alone or in combination, initially transmitting the data at a first transmission rate until a minimum threshold of data is stored in the buffer and at a second transmission rate after the minimum threshold level of data is stored in the buffer, wherein the first data transmission rate is higher than the second data transmission rate, as is recited in dependent Claims 13-16, 30-33 and 42-45.

Despite acknowledging that “Janky does not teach monitoring the buffer in order to adjust the transmission rate,” the Examiner suggests that “[m]onitoring a buffer within a device to adjust the data transmission rate was well known in the art as been shown by Ravi.” (June 17, 2003 Office Action, at 4). Applicants respectfully submit that the Ravi '834 patent

does not teach simply monitoring the buffer to adjust the data transmission, nor do the dependent Claims 13-16, 30-33 and 42-45 recite simply monitoring the buffer to adjust the data transmission. The Ravi '834 patent teaches dynamically adjusting the bandwidth of a data transfer based on dynamically calculated performance variables. Specifically, in the Summary of the Invention (Col. 3, lines 15-25), the Ravi '834 patent explicitly discloses:

If a playtime of the playout buffer, which is one measure of the number of data packets currently in the playout buffer, **drops below a dynamically computed Decrease Bandwidth (DEC_BW)** threshold, then the transmission rate is **decreased** by sending a DEC_BW message to the server.

Conversely, if the number of packets remaining in the playout buffer **rises** above a **dynamically computed Upper_Increase_Bandwidth (INC_BW)** threshold and does not drop below a Lower INC_BW threshold for at least an INC_BW wait period, then the transmission rate is **incremented**.

In an alternate embodiment, the Ravi '834 patent discloses that "the client computer also determines an average client computational capacity. Accordingly, if the average client computational capacity is less than then the network capacity, the lower of the two capacities is the determining one, thereby avoiding a playout buffer overrun." (Col. 3, lines 32-38).

The Ravi '834 patent, however, clearly does not transmit data at a first transmission rate until a minimum threshold is met and then at a lower transmission rate after the minimum threshold is met, as is recited in dependent Claims 13-16, 30-33 and 42-45. Applicants respectfully submit that the **dynamic computation** of thresholds used to modify subsequent data transmission, as taught by the Ravi '834 patent, is different from transmitting data at a first transmission rate until a data threshold is met and the subsequent data is transmitted at a second data transmission rate, wherein the first transmission rate is higher than the second transmission

rate, as recited in dependent Claims 13-16, 30-33 and 42-45.

Accordingly, in addition to the reasons set forth above with respect to independent Claims 1, 20 and 41, Applicants respectfully submit that dependent Claims 13-16, 30-33 and 42-45 are not obvious the Janky '941 patent in view of the Ravi '834 patent for these additional reasons. Reconsideration and withdrawal of the §103 rejection are respectfully requested.

III. NEW CLAIMS 63-69

Applicants have added new dependent Claims 63-69. As is discussed below, no new matter has been added and entry of the new claims is respectfully requested.

New Claim 63 depends from independent Claim 1 and recites "wherein the transceiver is a wideband transceiver operatively connected to an antenna and the microprocessor." Support for this claim is found in the specification, for example at page 7, lines 16-21. No new matter has been added.

New Claim 64 depends from independent Claim 1 and recites "wherein the microprocessor is configured to manage power consumption of device components." Support for this claim is found in the specification, for example at page 8, lines 1-5. No new matter has been added.

New Claim 65 depends from Claim 7 and recites "wherein the microprocessor is configured to establish a connection with the wireless telecommunication network and display a listing of at least one multimedia file server connected to the wireless telecommunication network on the visual display." Support for this claim is found in the specification, for example at page 10, lines 13-21. No new matter has been added.

New Claim 66 depends from independent Claim 65 and recites "wherein the

displayed listing of at least one multimedia file server includes a remote multimedia file server and a file stored on said remote multimedia file server.” Support for this claim is found in the specification, for example at page 10, lines 1-6. No new matter has been added.

New Claim 67 depends from independent Claim 65 and recites “wherein the displayed listing of at least one multimedia file server includes a central multimedia file server with links to at least one remote multimedia file server and a multimedia file stored on the remote multimedia file server.” Support for this claim is found in the specification at page 10, lines 1-6. No new matter has been added.

New Claim 68 depends from independent Claim 65 and recites “wherein the microprocessor is configured to receive a signal from the user control corresponding to a user selected displayed multimedia file server.” Support for this claim is found in the specification at page 11, lines 1-3. No new matter has been added.

New Claim 69 depends from independent Claim 65 and recites “wherein the microprocessor is configured to create a multimedia streaming file request transmitted to a connected multimedia file server.” Support for this claim is found in the specification at page 11, lines 1-3. No new matter has been added.

Applicants respectfully submit that new dependent Claims 63-69 are patentable over the prior art of record. Entry of the amendments and allowance of the claims are respectfully requested.

CONCLUSION

For the reasons discussed above, applicant respectfully submits that all of the pending claims are patentable and in condition for allowance, which is respectfully requested.

In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the telephone number provided below.

Favorable consideration is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required for the timely consideration of this amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment, to Deposit Account No. 13-4500, Order No. 3037-4178.

Respectfully submitted,

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